

A business may have nexus with a state, even though it does not have a retail operation in that state. 86 Ill. Adm. Code 150.201(i). (This is a GIL)

March 9, 2001

Dear Xxxxx:

This letter is in response to your letter dated January 25, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See, 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

It is the desire of ORGANIZATION to be in compliance with your state laws governing the collection of sales and use tax on products that our ministry sells in your state. Each state governs the collection of sales and use taxes in different ways, creating confusion as to whether a seller or a buyer is required to collect and/or remit to the state. I am writing to request a written reply as to whether we must collect sales tax on books and tapes that are sold to citizens of your state via one of the following three methods:

1. Sales from the Internet
2. Sales by mail or telephone
3. Sales during a speaking engagement while in your state

As we understand the rules of nexus, most states require a 'physical' presence, in a location, such as a store, office, warehouse or an agent of the company doing business in the state. ORGANIZATION is incorporated in STATE, but with no physical presence there. We maintain a permanent headquarters in AAA. For purposes of Internet sales, our host server is located in BBB and our ISP is in AAA. For sales by mail or telephone, at times we may contract with a third party to field the calls and process the orders, or they will send the orders to us and we will fill from our warehouse in AAA.

This is a complex area and I want to be sure that we are in compliance with your laws. Again, I request that you issue a written ruling on whether we have to collect and remit sales taxes from the sale of products based on the information presented above. If taxes are required, please send the appropriate forms along with the legislation and rules that require the collection of taxes.

The Department of Revenue is unable to make nexus determinations in the context of a General Information Letter because the amount of information required to make that determination is often best gathered by an auditor. The following information outlines the principles of nexus. We hope it is helpful in determining whether you are responsible for paying tax in Illinois.

Illinois taxes the retail sale and use of tangible personal property under two separate but related statutes. The Retailer's Occupation Tax Act imposes a tax upon persons engaged in the business of selling tangible personal property at retail. 35 ILCS 120/2. The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. 35 ILCS 105/3.

An Illinois retailer is one who either accepts purchase orders in the State of Illinois or maintains an inventory in Illinois and fills Illinois orders from that inventory. The Illinois retailer is liable for Retailers' Occupation Tax on gross receipts from sales and must collect the corresponding Use Tax incurred by purchasers.

The definition of a "retailer maintaining a place of business in Illinois" is set forth at 86 Ill. Adm. Code 150.201(i), see enclosed. An out-of-State retailer maintaining a place of business in this State is required to register with the State as an Illinois Use Tax collector. See the enclosed copy of 86 Ill. Adm. Code 150.801. The retailer must collect and remit Use Tax to the State on behalf of its Illinois customers even though the retailer does not incur any Retailers' Occupation Tax liability.

The final type of retailer is simply the out-of-State retailer that does not have sufficient contacts (or "nexus") with Illinois to be required to submit to Illinois tax law. A retailer in this situation does not incur Retailers' Occupation Tax on sales into Illinois and is not required to collect Use Tax on behalf of its Illinois customers. However, the retailer's Illinois customers still incur Use Tax on the purchase of the out-of-State goods and have a duty to self-access their Use Tax liability and remit the amount directly to the State.

The United States Supreme Court in the case of Quill Corp. v. North Dakota, 112 S.Ct. 1904 (1992), set forth the current guidelines for determining what nexus requirements must be met before a person is properly subject to a state's sales tax laws. The Supreme Court set out a two-prong test for nexus. The first prong is whether the Due Process Clause is satisfied. Due Process will be satisfied if the person or entity purposely avails himself or itself of the benefits of an economic market in a forum state. *Id.* at 1910. The second prong of the Supreme Court's nexus test requires that, if due process requirements have been satisfied, the person or entity must have a physical presence in the forum state to satisfy the Commerce Clause.

A physical presence does not mean simply an office or other physical building. Under Illinois tax law, it also includes the presence of any representative or other agent of the seller. The representative need not be a sales representative and it is immaterial for tax purposes that the representative's presence is temporary.

Sales of tangible personal property made in Illinois and delivered to purchasers in Illinois are subject to Retailers' Occupation Tax and any applicable local taxes. This is the case for sales in which the purchase order is accepted in Illinois. This could include sales made while at trade shows. If purchase orders placed by customers through mail order or the Internet are accepted in Illinois, they too are subject to Retailers' Occupation Tax and applicable local taxes. See 86 Ill. Adm. Code 130.605, enclosed.

Persons considered to be "retailers maintaining a place of business" because of their Illinois activities are required to collect Use Tax on sales made to all Illinois purchasers regardless of the

manner in which the orders are placed. For instance, a “retailer maintaining a place of business in Illinois” will be required to collect Use Tax on all his sales to Illinois purchasers, regardless of whether those sales are placed by mail order, telephone order or over the Internet.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department’s Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

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